

Calendar No. 967

96TH CONGRESS }
2d Session }

SENATE

REPORT
No. 96-882

PROVIDING FOR THE SETTLEMENT AND PAYMENT OF CLAIMS OF
U.S. CIVILIAN AND MILITARY PERSONNEL AGAINST THE UNITED
STATES FOR LOSSES RESULTING FROM ACTS OF VIOLENCE
DIRECTED AGAINST THE U.S. GOVERNMENT OR ITS REPRESENTA-
TIVES IN A FOREIGN COUNTRY OR FROM AN AUTHORIZED EVACUA-
TION OF SUCH PERSONNEL FROM A FOREIGN COUNTRY

AUGUST 1 (legislative day, JUNE 12), 1980.—Ordered to be printed

Mr. ROBERT C. BYRD (for Mr. KENNEDY), from the Committee on
the Judiciary, submitted the following

REPORT

[To accompany H.R. 6086]

[Includes the cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to which was referred the bill (H.R. 6086) to provide for the settlement and payment of claims of civilian and military personnel against the United States for losses resulting from acts of violence directed against the United States Government or its representatives in a foreign country or from an authorized evacuation of such personnel from a foreign country, having considered the same, reports favorably thereon and recommends that the bill without amendment do pass.

PURPOSE AND SUMMARY

The purpose of the proposed legislation is to add a new Section 9 to the Military Personnel and Civilian Employees' Claims Act of 1964. The new section would authorize the head of any agency to pay not more than \$40,000 to compensate any member of the uniformed services or any civilian employee of that agency for damage or loss of personal property in a foreign country suffered incident to that individual's service when the individual's damage or loss resulted from either (1) an evacuation of United States personnel in response to political unrest or hostile acts in that country or from any such incident or hostile act, or (2) from act of mob violence, terrorist attacks, or other hostile acts, directed against the United States Government or its officers or employees.

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American citizens overseas are generally unable to obtain insurance to cover the risks which would give rise to an order for evacuation. Insurance coverage for damages arising from riot, civil disorder, or acts of war, is not readily available. If obtainable, an extremely high premium is demanded. Furthermore, coverage for personal property abandoned in foreign countries by evacuees is virtually unobtainable.

The most recent situation in which military and civilian personnel were faced with a risk covered by the proposed legislation was the evacuation from Iran. These individuals had been encouraged to bring full weight allowances of personal property with them to Iran in light of the generally difficult living conditions existing in that country. While some of these individuals left Iran with virtually all of their belongings, others were only able to get a 1,000-pound shipment out of the country, and still others left with only one suitcase per evacuee. Many of these individuals had purchased private insurance on their personal belongings, but were later informed that their insurance did not cover riot damages or abandoned property.

This legislation proposes that the provision relating to emergency evacuations be made retroactive to claims which occurred after December 31, 1978, in order to cover the evacuation from Iran.

LEGISLATIVE HISTORY

Until the creation of the original Military Personnel Claims Act in 1945, statutory authority to settle claims resulting from the losses of personal property by military personnel was obsolete and insufficient. The Military Personnel Claims Act repealed the scattered provisions, consolidated the authority and updated the law to provide compensation for military personnel and civilian employees of the War Department in the event of "damage to or loss, destruction, capture or abandonment of personal property occurring incident to their service." Property was required to be "reasonable, useful, necessary and proper" for compensation to be paid. In 1952, the first compensation ceiling was added to the Act, limiting claims to no more than \$2,500.

The Military Personnel and Civilian Employees' Claims Act originated as a bill, H.R. 6910, which was reported by the House Judiciary Committee in the 88th Congress (H.R. Rep. No. 460, 88th Cong., 1st Sess. (1963)). That bill was introduced as recommended in an executive communication sent the Congress by the Federal Aviation Agency. It was stated in the communication that in 1952 the Civil Aeronautics Administration, the predecessor to the Federal Aviation Agency was faced with the problem of obtaining relief for a group of Government employees who suffered personal property losses when Government-owned quarters on Wake Island were destroyed or damaged by a typhoon. The losses suffered by these employees served to emphasize the total lack of authority on the part of the employing agencies in that case to make administrative settlement in an instance where military personnel or civilian employees of the military departments could have been compensated in accordance with the provisions of the Military Personnel Claims Act. This prompted the Civil Aeronautics Administration to recommend legislation which would have the effect of extending similar settlement authority for claims for personal property losses suffered by employees of all Federal agencies.

The provisions of the Military Personnel and Civilian Employees Claims Act of 1964 granted authority for all agencies of the government to settle up to \$6,500 for personal property losses suffered by Government personnel incident to their service. In 1965, the Act was amended to permit the military departments to settle claims up to \$10,000.¹ In 1968, the Act was amended to cover District of Columbia employees.² In 1970, a requirement for an annual report to Congress was deleted.³ The limit for payment of claims was increased to \$15,000 as to all agencies of Government.⁴

CLAIMS ADMINISTRATION UNDER THE PRESENT STATUTE

The requirements and purpose referred to in the discussion of the 1945 law have been reflected in the administration of the current statute. The regulations implementing the present statute do not provide for a payment for all property loss and it is clear that the statute and the relevant regulations do not provide the equivalent of full insurance of all property that might be subject to loss or damage. A fundamental aspect of claims settlement under this authority and under this bill is that the property must have a reasonable relevance to the service and activity of the employee or military member in the performance of his duties. At the House Judiciary Subcommittee on Administrative Law and Governmental Relations hearing on an earlier version of H.R. 6086, the Air Force testimony emphasized that the Defense Department regulations implementing the statutory mandate require that the quantity and types of property lost be "reasonable, useful or proper under the circumstances." The services have jointly adopted maximum amounts payable for jewelry, antiques, stereos, collections, paintings and other valuable items. Due care is required of military and civilian members in safeguarding their personal effects, and where a claimant is contributorily negligent in causing the loss, no award is made. Depreciation is deducted consistent with insurance industry standards to arrive at the true value of items claimed. Substantiation of personal claims is an absolute requirement, and all the military services have well-defined, uniform procedures and trained legal personnel with years of experience in investigating and adjudicating these claims.

Similarly, the Honorable Thomas M. Tracy, Assistant Secretary of State for Administration, who appeared as the State Department witness before the House Subcommittee on Administrative Law on February 6, 1980, stated that when the authority to reimburse employees for personal property losses was granted to civilian agencies just over 15 years ago, it was agreed among the three largest foreign affairs agencies—State, AID and ICA (then USIA)—that the claims program should be administered in such a manner that the employees of those agencies would be treated equally. Accordingly, there are joint regulations which govern the adjudication of claims by all employees of State, AID and ICA. To avoid any possible differences in the interpretation and application of these regulations, those agencies

¹ Public Law 89-185, § 3(b), September 16, 1965, 79 Stat. 789.

² Public Law 90-561, October 12, 1968, 82 Stat. 998.

³ Public Law 91-311, July 8, 1970, 84 Stat. 412.

⁴ Public Law 93-455, § 1, October 18, 1974, 88 Stat. 1381.

have agreed that all claims would be processed and adjudicated at a central office in the State Department. The House Subcommittee was informed that the joint regulations have provided the means for assuring equitable and uniform claims processing for the large segment of overseas civilian personnel who are employed by these agencies.

On October 18, 1974, Section 3 of the Military Personnel and Civilian Employees' Claims Act was amended to provide a limit of \$15,000 for payment of claims for the damage or loss of personal property of Government personnel incident to their service. This is the normally applicable limit for such claims and will continue to apply to most claims after the enactment of the change proposed in this bill. The increased authority which would be provided by the new Section 9 as set forth in this bill, would only apply to claims for the damage or loss of personal property as a result of the events or occurrences stated in that section.

The House Administrative Law Subcommittee was advised by the Air Force witness at the February 6 hearing that the Defense Department could find no claim for damage or loss incident to service in Iran prior to December 31, 1978, which exceeded the \$15,000 maximum. On the other hand, there were at least 179 instances of loss exceeding the \$15,000 maximum after that date. A summary supplied by the Department of Defense regarding Iran claims which is entitled "Iran Evacuation Claims" is set out at the end of this report.

In Part I of that summary, it is shown that 1,294 claims were settled as of December 31, 1979, with payments amounting to \$7,070,237. However, almost 75 percent of this amount, or \$5,280,514, was reimbursed from Iranian funds which were on deposit in this country for the purchase of military goods and services under Foreign Military Sales (FMS) contracts. Therefore, the actual cost to the U.S. Government was \$1,789,723.

Part II analyzes the claims in categories to show the claims subject to settlement with various limits on the authority which could be made applicable to claims based on losses sustained in the Iranian evacuation.

Part III of the Defense Department summary reflects both the additional amounts that could be paid by the Department of Defense for Iran claims if the maximum for such claims was raised to \$35,000 or \$40,000 and the amounts which could be expected to be reimbursed under Iranian FMS contracts under each of those limits. Thus, if the maximum payable on such claims was raised to \$35,000, the additional net cost to the United States would be \$322,568, but the additional cost charged against Iranian funds would be \$952,405.

The bill, H.R. 6086, provides that the United States is to be subrogated to the rights of a claimant against a foreign country upon payment of a claim. Subsection (e) of new Section 9 added to the Military Personnel and Civilian Employees' Claims Act by the amended bill, would provide that when the United States pays a claim under the authority of that section, the United States shall be subrogated to any rights the claimant may have against a foreign country in which that damage or loss occurred which gave rise to the claim.

Along with its testimony on February 6, 1980, the State Department submitted an analysis of claims based upon losses suffered by civilian personnel both in Iran and in Pakistan. Included in this analysis were the amounts of six State Department claims which exceeded

the present \$15,000 limit in the statute. The six claims exceeded that limit by a total of \$134,966.92. The State Department analysis is also set out at the end of this report.

CONCLUSION

The House Judiciary Committee concluded, and the Senate Judiciary Committee agrees, that the testimony presented at the hearing on February 6, 1980, and the information supplied by the State Department and the Department of Defense in addition to that testimony establish a clear basis and define the need for the amendment provided for in H.R. 6086 as passed by the House of Representatives on April 21, 1980. Further, the Department of Defense in a communication transmitted to the Congress on October 10, 1979, included a recommendation for an amendment to the Military Personnel and Civilian Employees' Claims Act to provide for authority to pay claims arising as the result of losses incident to an evacuation. As is the case in the bill, H.R. 6086, that communication urged that the proposed legislation include an effective date of December 31, 1978, in order to cover claims arising from the evacuation of Iran. That communication is also set out following the report.

Corresponding Senate legislation S. 2582 was introduced on April 17, 1979, by Senator Church. Both bills, S. 2582 and H.R. 6086, were ordered reported by the Senate Judiciary Committee on July 23, 1980. The committee recommends that the Senate suspend consideration of S. 2582 and favorably consider H.R. 6086 so that this much-needed legislation may be enacted without delay.

It is urged that the bill S. 2582 be considered favorably.

SECTION-BY-SECTION ANALYSIS

The bill amends Section 3 of the Military Personnel and Civil Employees' Claims Act of 1964, as amended (78 Stat. 767, as amended, 31 U.S.C. § 241). The authority to settle claims is broadened.

SUBSECTION (a)

The subsection provides that, subject to government-wide policy prescribed by the President, the head of any agency may settle and pay claims up to \$40,000 for damage to, or loss of, personal property sustained by employees or uniformed service members on or after December 31, 1978, in a foreign country when the damage or loss was incident to the service of that member, officer, or employee, and

(1) that that individual was evacuated from that country on or after December 31, 1978, in an evacuation authorized by competent authority which was in response to incidents of political unrest or hostile acts in that country, and when the damage or loss resulted from that evacuation or from any such incident or hostile act; or

(2) that damage or loss resulted from acts of mob violence, terrorist attacks, or other hostile acts, directed against the United States Government or its officers or employees.

SUBSECTION (b)

The subsection provides for the order and priority of payment of claims in the event the claimant is deceased. The order of payment may then be made to decedent's surviving (1) spouse, (2) children, (3) father or mother, or both, or (4) brothers or sisters, or both, that arose before, concurrently with, or after the decedent's death and the claim is otherwise covered by the authority provided in new Section 9.

SUBSECTION (c)

The subsection requires that, in order to be considered under the new section, the claim must be presented in writing within two years after the claim accrues, or within one year after the date of the enactment of this bill, whichever is later.

SUBSECTION (d)

Each agency is required to issue regulations governing claims settlement under the new section and the same standards applied in adjudicating a claim under the provisions which govern claims settlement under the other provisions of the Military Personnel and Civilian Employees' Claims Act, and are to apply to settlements under the new section. It is further provided that any claim subject to settlement under new section 9 which has previously been adjudicated under the authority for payment under section 3 of the Act in connection with that claim which has not been paid shall be payable to the extent permitted in this section.

SUBSECTION (e)

This subsection provides that when the United States pays a claim under the authority provided in new section 9, it shall to the extent of the amount of such payment, be subrogated to any right of claim, with respect to the same damage or loss for which the claim under this section was paid, that the claimant may have against the foreign country in which that damage or loss occurred.

COST ESTIMATE

The Congressional Budget Office's cost estimate for this legislation is set forth as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., July 29, 1980.

HON. EDWARD M. KENNEDY,
Chairman, Committee on the Judiciary, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 6086, a bill to provide for the settlement and payment of claims of United States civilian and military personnel against the United States for losses resulting from acts of violence directed against the United States Government or its representatives in a foreign country or from an authorized evacuation of personnel from a foreign country, as ordered reported on July 23, 1980 by the Senate Committee on the Judiciary.

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Should the committee so desire, we would be pleased to provide further detail on this cost estimate.

Sincerely,

Alice M. Rivlin, *Director*.

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

JULY 29, 1980.

1. Bill number: H.R. 6086.
2. Bill title: A bill to provide for the settlement and payment of claims of United States civilian and military personnel against the United States for losses resulting from acts of violence directed against the U.S. Government or its representatives in a foreign country or from an authorized evacuation of personnel from a foreign country.
3. Bill status: As ordered reported by the Senate Committee on the Judiciary on July 23, 1980.
4. Bill purpose: The purpose of this bill to to raise the maximum payable under the Military Personnel and Civilian Employees Claims Act of 1964 from \$15,000 to \$40,000 in the case of loss or damage resulting from hostile acts directed against the U.S. Government or its employees or resulting from sudden evacuation from overseas stations due to the same type hostile acts. This increase in entitlement is retroactive to December 31, 1978.
5. Cost estimate:

[By fiscal year, in thousand of dollars]

	1981	1982	1983	1984	1985
Function 050:					
Estimated budget authority.....	709				
Estimated outlays.....	709				
Function 150:					
Estimated budget authority.....	123				
Estimated outlays.....	123				

6. Basis of estimate: This estimate assumes enactment by October 1, 1980. The estimate assumes payment only of those claims already approved by the Department of Defense and Department of State for past evacuations which exceeded the previous \$15,000 limit. The CBO has no basis for forecasting future claims.

7. Estimate comparison: None.

8. Previous CBO estimate: On March 25, 1980 CBO prepared a cost estimate for this bill as ordered reported by the House Committee on the Judiciary. This estimate is the same as that March 25, 1980 estimate.

9. Estimate prepared by: Patrick L. Renahan.

10. Estimate approved by:

C. G. NUCKOLS,

(For James L. Blum, Assistant Director for Budget Analysis).

INFORMATION SUPPLIED TO THE HOUSE COMMITTEE BY THE DEPARTMENT OF STATE CONCERNING IRAN EVACUATION CLAIMS

Claims for private personal property losses (State/AID/USICA)

JANUARY 1, 1979 TO JANUARY 28, 1980

Claims paid:	<i>Amount</i>
State (581) -----	\$743, 124. 31
AID (122) -----	161, 063. 65
ICA (87) -----	69, 463. 92
Total (790) -----	973, 651. 88

Of the above the following were caused by the situations in Iran and Pakistan:

Iran:	<i>Amount</i>
State (64) -----	\$173, 957. 25
AID (0) -----	
ICA (14) -----	9, 006. 15
Total (78) -----	182, 963. 40

The adjudicated value of 1 State claim exceeded the \$15,000 limit by \$2,393.83.

Pakistan:	<i>Amount</i>
State (59) -----	\$203, 233. 91
AID (2) -----	8, 202. 00
ICA (9) -----	20, 667. 65
Total (70) -----	232, 103. 56

The adjudicated value of 6 State claims exceeds the \$15,000 limit as follows:

<i>Amount</i>
\$11, 190. 00
11, 487. 00
26, 900. 40
25, 956. 00
33, 082. 00
26, 351. 92
134, 966. 92

Iran evacuation claims (through December 31, 1979)

I. Claims paid and direct cost:

A. Gross cost at \$15,000 limit:	<i>Amount</i>
(1) Army (654 claims) -----	\$3, 557, 040
(2) Navy and Marine Corps (152 claims) -----	692, 869
(3) Air Force (488 claims) -----	2, 820, 328

Total (1,294 claims) -----	7, 070, 237
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B. Reimbursements from Iran's FMS accounts -----	5, 280, 514
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C. Net expense to U.S. Government (25.3 percent of gross) -----	1, 789, 723
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II. Claims with uncompensated losses:

A. With \$15,000 limit:	
(1) Army (81) -----	555, 030
(2) Navy (19) -----	151, 685
(3) Air Force (79) -----	624, 884

Total (179) -----	1, 331, 599
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B. With \$25,000 limit:	
(1) Army (20) -----	290, 096
(2) Navy (19) -----	98, 367
(3) Air Force (23) -----	128, 231
Total (62) -----	516, 694
C. With \$35,000 limit:	
(1) Army (1) -----	30, 720
(2) Navy (2) -----	44, 423
(3) Air Force (6) -----	60, 907
Total (9) -----	136, 050
D. With \$40,000 limit:	
(1) Army (1) -----	25, 720
(2) Navy -----	0
(3) Air Force (6) -----	30, 907
Total (7) -----	56, 627

III. Additional cost if limit were raised to:

A. \$35,000:	
(1) Gross cost -----	1, 195, 549
(2) Reimbursement, assuming same rate of reimbursement from Iran's FMS account as was experienced on payments already made (74.7 percent) -----	893, 075
(3) Net (25.3 percent of gross) -----	302, 474
B. \$40,000:	
(1) Gross cost -----	1, 274, 973
(2) Reimbursement (computed as above) -----	952, 405
(3) Net (25.3 percent of gross) -----	322, 568

NOTE.—The hostages now held in Iran will undoubtedly have suffered losses and will file claims. In addition, not all employees who resided on the destroyed compound in Islamabad have submitted claims.

REGULATORY AND PRIVACY IMPACT STATEMENT

Pursuant to Senate Rules, the committee finds that enactment of this legislation will have no undue or burdensome impact on existing requirements and will not require the issuance of additional regulations or paperwork for its implementation.

CHANGES IN EXISTING LAW

In compliance with paragraph (4) of rule XXIX of the Rules of the Senate; changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed by black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

MILITARY PERSONNEL AND CIVILIAN EMPLOYEES CLAIMS ACT

PUBLIC LAW 88-558, AS AMENDED, 88TH CONGRESS, 2D SESSION, 78 STAT. 769,
AS AMENDED

AN ACT To provide for the settlement of claims against the United States by members of the uniformed services and civilian officers and employees of the United States for damage to, or loss of, personal property incident to their service, and for other purposes

* * * * *

"Sec. 9. (a) Subject to any policies that the President may prescribe, the head of any agency, or his designee, may settle and pay not more than \$40,000 for any claim against the United States made by a member of the uniformed services under the jurisdiction of that agency or by a civilian officer or employee of that agency for damage to, or loss of, personal property in a foreign country, incurred on or after December 31, 1978, which damage or loss was incident to the service of that member, officer, or employee, and

"(1)(A) that member, officer, or employee was evacuated from that country on or after December 31, 1978, in accordance with a recommendation or order of the Secretary of State or other competent authority which was made in response to incidents of political unrest or hostile acts by people in that country, and (B) that damage or loss resulted from that evacuation or from any such incident or hostile act; or

"(2) that damage or loss resulted from acts of mob violence, terrorist attacks, or other hostile acts, directed against the United States Government or its officers or employees.

"(b) The head of the agency, or his designee, authorized under subsection (a) to settle and pay a claim of a person described in such subsection may, if such person is deceased, settle and pay any claim made by the decedent's surviving (1) spouse, (2) children, (3) father or mother, or both, or (4) brothers or sisters, or both, that arose before, concurrently with, or after the decedent's death and is otherwise covered by this section. Claims of survivors shall be settled and paid in the order set forth in the preceding sentence.

"(c) A claim may be allowed under this section only if it is presented in writing within two years after the claim accrues, or within one year after the date of the enactment of this section, whichever is later.

"(d) The head of each agency shall issue regulations to carry out this section. The same standards applied in adjudicating a claim under section 3 of this Act shall be applied in adjudicating a claim under this section. Any claim to which this section applies but which has been adjudicated under section 3 of this Act by the applicable head of an agency before the date of the enactment of this section shall not be adjudicated under this section, but any amount of loss adjudicated under such section 3 in connection with that claim which has not been paid shall be payable to the extent permitted in this section.

"(e) Upon payment of a claim under this section, the United States shall, to the extent of the amount of such payment, be subrogated to any right or claim, with respect to the same damage or loss for which the claim under this section was paid, that the claimant may have against the foreign country in which that damage or loss occurred."